IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

WP(C).No. 15252 of 2007(N)

PETITIONER:

P.V.VIJI, OPERATOR GR-III,
(UNDER SUSPENSION) CLTC,TRANSFORMERS & ELECTRICALS KERALA LTD., ANGAMALY, RESIDING AT PANDAPARAMBIL HOUSE, MEKKAD P.O., ANGAMALY.

BY ADV. SRI.C.D.JOHNY

RESPONDENTS:
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1. **THE TRANSFORMERS & ELECTRICALS KERALA LTD., ANGAMALY SOUTH P.O., ERNAKULAM DISTRICT REPRESENTED BY ITS MANAGING DIRECTOR.**

2. **THE DEPUTY MANAGER (PERSONNEL), TRANSFORMERS & ELECTRICALS KERALA LTD., ANGAMALY SOUTH P.O., ERNAKULAM DISTRICT.**

3. **THE ASSISTANT GENERAL MANAGER (PRODUCTION),TRANSFORMERS & ELECTRICALS KERALA LTD ANGAMALY SOUTH P.O., ERNAKULAM DISTRICT.**

4. **SRI.P.P.GOVINDAN, MANAGER (PERSONNEL), TRANSFORMERS & ELECTRICALS KERALA LTD., ANGAMALY SOUTH P.O., ERNAKULAM DISTRICT.**

BY ADV. SRI.M.PATHROSE MATTHAI (SR.)
SRI.SAJI VARGHESE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 15252 OF 2007-N

JUDGMENT

The petitioner, who is an employee of the 1st respondent Company, is facing disciplinary proceedings. She requires legal assistance to defend herself. Her request in this regard has been rejected by the Enquiry Officer, who is the Manager (Personnel) of the Company. So, this writ petition is filed, seeking inter alia, for a mandamus to direct the 1st respondent to permit the petitioner to seek the assistance of a lawyer of her choice in the disciplinary proceedings. According to her, the charge against her involves very complicated questions of law and facts. Unless she is assisted by a lawyer, she will be seriously prejudiced in her defence.

2. The learned standing counsel for the 1st respondent, upon instructions, submitted that the petitioner has already been permitted to defend herself by a co-worker of her choice. In answer, the learned counsel for the petitioner submits that no co-worker is willing to defend her, having regard to the nature of the allegations against her.

3. Now, the position is fairly well settled that no worker has a right to be defended by a lawyer, unless there is an express provision to that effect

in the service Rules. In exceptional cases, of course, the courts have interfered and said that unless the delinquent worker gets the assistance of a lawyer, the same may amount to violation of his rights under Article 21. The allegation against the petitioner is that using the technique of computer morphing, a picture of her co-worker A.A.Semina was created along with another male co-worker and the said photograph was distributed in the company and other public places. The petitioner submits, morphing pictures is a complicated process and she may not be able to defend against the said allegation. If the petitioner creates a picture and keeps the same with her, it may not be an offence. The main offence is that she distributed it. It does not involve any complicated facts. So, the contention of the petitioner that the assistance of a lawyer is absolutely necessary, cannot be accepted, especially in view of various decisions of this Court, including the recent decision in **St.Thomas Missions Hospital v. State of Kerala** (2007(2) KLT 415). The relevant portion of the said judgment reads as follows:

> "8. The second ground on which the enquiry was found to be defective was that the delinquents were denied the assistance of a lawyer. The contention before us is that this question is also settled by various decisions of the Supreme Court and this Court. In this connection, reference was made by the learned counsel for the appellant to the decision of the Supreme court in Bharat Petroleum Corporation Lt. v.

> Maharashtra General Kamqar Union and others, (1999)1 SCC 626 and a Division Bench decision of this Court in Saran v. Cochin Refineries Ltd., 1985 KLT 1171. It categorically holds that the right to be represented by another person much less a lawyer is available to the delinquent only to the extent specifically provided in the service rules. It is settled law that unless the service rules or the standing orders permit, the delinquent workmen cannot as of right claim assistance of a lawyer. Further, charges against them as stated in the show cause notice stated above is not that complicated as to require the assistance of a lawyer to defend themselves. In any event, from a reading of the allegations of misconduct in the show cause notice referred to above, we are not at all satisfied that denial of assistance of a lawyer in this particular case would in any way affect the validity of the enquiry. That being so, the order of the Labour Court is against the settled legal position and as such can only be regarded as perverse."

In view of the above position, the writ petition fails and it is dismissed.

24th May, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/